

**IN THE UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF PENNSYLVANIA
(PHILADELPHIA)**

In re:

Jorge R. Rosario

and

Ipattia C. Bueno,

Debtors.

BMO Harris Bank N.A.,

Movant,

vs.

Jorge R. Rosario,

Respondent.

Chapter 13

Bankruptcy No. 18-14350-elf

**MOTION OF BMO HARRIS BANK N.A.
FOR RELIEF FROM STAY TO RECOVER CERTAIN EQUIPMENT**

BMO Harris Bank N.A. (“BHB”), assignee of GE Capital Commercial Inc. (Transfer Acknowledgement attached hereto as **Exhibit A**), a secured creditor in the above-referenced bankruptcy case, hereby requests that this Court enter an Order granting it relief from the automatic stay to allow it to take all steps, to recover Equipment from Jorge R. Rosario (“Debtor”) and to the extent necessary, to sell or otherwise dispose of any reclaimed or returned equipment and, in support thereof, avers as follows:

JURISDICTION AND VENUE

1. This is a contested matter in which the Court has jurisdiction pursuant to 28 U.S.C. §1334, 28 U.S.C. §157. Venue is proper in this district pursuant to 28 U.S.C. §1409(a). The statutory predicates for this motion are 11 U.S.C. §§361, 362, 365, 704, 1106 and 1107.

2. This Motion is a core proceeding pursuant to 28 U.S.C. §157(b)(2)(A), (G), and (O).

BACKGROUND

3. On June 29, 2018 (the “Filing Date”), a voluntarily Chapter 13 petition was filed by the Debtor with this Court.

4. At all relevant times, BHB was in the business of financing transportation equipment purchases.

5. BHB is the holder of prepetition claims against the Debtor in excess \$182,912.30.

Loan and Security Agreement

6. Prior to the Filing Date, on or about August 26, 2014, Bless Carriers LLC (hereinafter “Bless Carriers”) entered into a Loan & Security Agreement (hereinafter the “Agreement”) with BHB in the total amount of \$174,762.00, for the use of the following equipment (hereinafter the “Equipment”):

Year	Manufacturer	Model	Description	Serial Number
2015	Freightliner	Coronado Series	Coronado Series 13264T 132 BBC Conv Cab Truck 6X4	3ALXFB000FDGA4658

A true and correct copy of the Agreement and Title are attached collectively as **Exhibit B**.

7. On the same day, the Debtor executed a Continuing Guaranty (hereinafter the “Guaranty”), in which he unconditionally guaranteed the repayment of Bless Carriers’ debt to Movant. A true and correct copy of the Guaranty is attached as **Exhibit C**.

8. Pursuant to the Agreement, Bless Carriers agreed to make monthly payments for Equipment beginning on or about October 10, 2014 for a term of 72 months.

9. Upon information and belief, Bless Carriers used the Equipment at its business address located at 4920 Pennel Road, #336, Aston, PA 19014.

10. Pursuant to the Agreement, Bless Carriers was obligated to pay a minimum monthly payment of \$2,427.25.

11. On or about August 10, 2015, Bless Carriers failed to make the minimum monthly payments and defaulted on the Agreement.

12. On or about August 10, 2015, Debtor defaulted under the Guaranty by failing to cure the default of Bless Carriers.

13. Debtor has a past due amount of \$89,201.35 under the Agreement.

POST-PETITION ACTIVITY

14. At present, BHB is not in possession of the Equipment.

15. No payments have been received from the Debtor post-petition.

16. As of today, Debtor owes BHB \$182,912.30 under the Agreement. No other credit or other offsets are due to Debtor.

RELIEF FROM STAY

17. Movant requests that relief from the automatic stay be granted in order to take all steps to reclaim the Equipment, and to the extent necessary, sell or otherwise dispose of any reclaimed or returned Equipment.

18. In pertinent part, Section 362 (d) of the Bankruptcy Code provides:

- (d) On request of a party-in-interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by termination, annulling, modifying, or conditioning such stay
- (1) for cause, including the lack of adequate protection of an interest in property of such party in interest:

(2) with respect to a stay of an act against property under subsection (a) of this section, if –

- (a) the debtor does not have any equity in such property; and,
- (b) such property is not necessary to an effective reorganization.

11 U.S.C. § 362(d)(1), (2).

19. BHB’s in-house asset management department has determined that the Equipment has a black book value (“BBV”) of approximately \$62,275.00.

20. The value of the Equipment is substantially lower than the amount Debtor owes to BHB.

21. Among other things, BHB is not adequately protected because the Debtor has failed to make any payment to BHB post-petition.

22. Debtor has no equity in the Equipment; therefore, BHB is entitled to relief from the operation of the stay and for the right to proceed to re-take possession of the Equipment pursuant to 11 U.S.C. §362(d)(2) of the Bankruptcy Code and, to the extent necessary sell or otherwise dispose of the Equipment.

23. In addition, the debtor does not have any equity in the Equipment and the Equipment is not necessary to any reorganization plans articulated by the Debtor

24. If the stay is lifted, the Court should require the Debtor to (i) cease use of BHB’s Equipment; (ii) cause all of BHB’s Equipment to be assembled, or returned to BHB; and (iii) to the extent any of BHB’s Equipment is not immediately assembled at the Debtor’s principal place of business or returned to BHB, provide BHB with the location(s), where BHB’s Equipment is located including contact information for each location.

25. Movant recognizes that Bless Carriers, the limited liability corporation that entered into the Agreement, is a distinct legal entity from Debtor and has not filed for

bankruptcy. Movant has filed this Motion to definitively establish that the automatic stay provision of the Bankruptcy Code does not apply to the Collateral.

WHEREFORE, BMO Harris Bank N.A., respectfully requests that this Court enter an Order in the form attached hereto granting it relief from stay to allow it to take all steps, to reclaim its equipment, sell or otherwise dispose of its equipment and grant such other relief as the Court deems appropriate.

Dated: July 31, 2018

By: /s/ James K. Haney
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